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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. RENELL THORPE, Defendant and Appellant.	C056537 (Super. Ct. No. 04F03406)

After finding defendant in violation of his probation, the trial court sentenced him to three years in state prison. On appeal, defendant contends the trial court erred by failing to dismiss the revocation of probation proceeding pursuant to Penal Code section 1203.2a and/or section 1381. (Undesignated statutory references that follow are to the Penal Code.) He also contends the trial court improperly calculated his custody credits. We affirm the judgment.

FACTS AND PROCEEDINGS

On September 22, 2003, defendant was placed on felony probation for five years in case No. 03F07099 (for violation of

section 666--petty theft with a prior). At that time, he was already on four grants of misdemeanor probation in other Sacramento County cases and one grant of felony probation in Alameda County. As a condition of his probation in case No. 03F07099, defendant was ordered to serve 180 days in county jail, and received 35 days of custody credit. On December 4, 2003, the court found defendant in violation of his probation. The court reinstated probation on the condition that defendant serve an additional 90 days in county jail but recommended defendant participate in the sheriff's work project.

Defendant committed spousal battery in the instant case (case No. 04F03406) on January 24, 2004, but defendant ran from deputies and was not arrested until later.

A bench warrant was issued in case No. 03F07099 on February 18, 2004, for defendant's failure to comply with the work project requirements. Defendant was arrested on case No. 03F07099 on February 26, 2004. He was returned on the warrant and, as reflected in the minutes, probation was reinstated on the original terms and conditions.

A nine-count felony complaint was filed in the instant case (case No. 04F03406) on April 5, 2004, at which time a warrant for defendant's arrest was requested. Defendant was arraigned on April 8, and entered a not guilty plea on April 15, 2004.

On April 13, 2004, defendant entered a plea of no contest to one count of spousal battery (§ 273.5). At that same hearing, the trial court found defendant in violation of his probation on four cases, including case No. 03F07099, revoked

probation and continued the matters to the same date as the instant case for judgment and sentencing.

On June 15, 2004, the trial court placed defendant on probation in the instant case, without imposing any county jail time on the matter. The trial court recited the sentenced time served on each of the misdemeanor probation cases and noted that defendant had 270 days of sentenced time credit in the felony probation case No. 03F07099. The trial court further noted that defendant was currently serving time on case No. 03F07099 and was not due to be released until June 27, 2004. The trial court terminated defendant's probation in all the misdemeanor cases (after completion of additional time) and ordered all the custody credit time be placed on those cases. The trial court revoked and reinstated defendant's probation on case No. 03F07099 on the original conditions, imposing no additional time.

On May 10, 2005, petitions for revocation of probation were filed in the instant case and in case No. 03F07099, alleging defendant had committed a new offense (possession of a firearm in violation of section 12021, subdivision (a)) in Alameda County. Defendant failed to appear at the arraignment and a bench warrant was issued.

On August 3, 2005, the Alameda County court revoked defendant's probation and committed him to state prison for two years. Defendant was received in San Quentin State Prison on August 15, 2005. On September 8, 2005, the prison received detainers, which indicated defendant had three outstanding

arrest warrants. Prison personnel filled out the detainer forms on October 26, 2005.

On December 15, 2005, defendant was summoned by prison personnel and made aware of the detainers and the pending petitions for violation of probation via an "Inmate Notification and Agency Acknowledgment of Detainer Receipt." One notice had a box checked stating, "You may request disposition of untried charges in accordance with Penal Code (PC) Section 1381," and the other notice had a box checked stating, "You may request disposition of probation in accordance with PC Section 1203.2a." Both forms stated, in bold print, "If the subject inmate wishes to exercise any of the above marked alternative, he/she should direct a written request to his/her institution records office."

Defendant was released on parole on May 18, 2006. On August 25, 2006, the parole agent filed a two-count violation of parole, which included allegations of making terrorists threats and battery. While defendant was awaiting the parole revocation hearing, he assaulted an inmate. Defendant was returned to state prison for 12 months on a parole revocation, making him eligible for parole on May 19, 2007.

At a hearing set for October 27, 2006, defendant asked for a continuance because his section 1381 demand had not been located. The court placed on calendar a motion to dismiss for denial of a speedy trial pursuant to section 1381, along with the hearing on the probation revocation.

At the November 17, 2006, hearing, the prosecutor presented the testimony of Frank Huntington, an investigator who had

investigated whether a section 1381 demand had been sent through the channels by defendant at any time while he was incarcerated at San Quentin. Huntington learned that the "C" file (or central file) follows the inmate. There is also a parole file held by the parole officer. Huntington contacted the local parole officer, who informed him that she did not see any indication of a section 1381 demand in defendant's file. Huntington also served a subpoena on the prison's litigation coordinator to have defendant's "C" file brought to court.

Christel Isler, a litigation coordination specialist with the Department of Corrections and Rehabilitation, testified that she reviewed defendant's "C" file. The file indicated defendant had outstanding warrants and that San Quentin had received notice of those warrants on September 8, 2005. Prison officials personally notified defendant of his outstanding warrants on December 15, 2005. The detainer notice provided to defendant explained "if the subject inmate wishes to exercise any of the above-marked alternatives, he/she should direct a written request to his or her institution records office." Isler explained that the written request "would be in the form of a 1381" and that, if defendant had filled one out, it would be in his "C" file. Isler determined that there was no such form in defendant's "C" file. A second box on the inmate notification provided "you may request disposition of probation in accordance with 1203.2(a)." Isler was not familiar with the procedure for filing in accordance with section 1203.2a.

With respect to the probation violation, Ron Garverick, an investigator with the district attorney's office, testified that he had interviewed defendant while he was in custody in Oakland and defendant admitted that he had possessed a firearm.

Defendant testified that, after he was notified of the detainers, he talked to a counselor who told him that he could not file a section 1381 demand because the hold was based on a probation violation. He then wrote to his counselor, Kay Stein, to make an appointment. Stein called him in for an interview and defendant explained about the probation violations. Stein told him he could not file a section 1381 demand but must, instead, write to a prison department called "Holds, Warrants, and Detainers."

Defendant stated he wrote to "Holds, Warrants, and Detainers" but the department did not respond. Defendant met with Stein again and she advised him that "Holds, Warrants, and Detainers" would get back to him. She advised defendant to write the department again, which he did. Defendant stated that he still did not receive a response. Defendant met with Stein again and Stein called the "Holds, Warrants, and Detainers" department. Stein told defendant that the department informed her that it had not received anything back from Sacramento.

Defendant testified he wrote to the "Holds, Warrants, and Detainers" department again. Defendant was subsequently released, without having heard anything from the department. Defendant further claimed he was required to "go through" his

counselor to file a section 1381 demand and could not do so himself.

Counselor Kay Stein was not called to testify. The only documents presented and admitted into evidence were the inmate copies of the "Inmate Notification and Agency Acknowledgment of Detainer Receipt."

The trial court denied defendant's motion to dismiss, finding defendant had not complied with the statutory procedures. The trial court noted that other prisoners had been able to send out either section 1381 or section 1203.2a demands. The court further found there was no evidence that defendant followed the procedures in section 1203.2a and there was nothing in defendant's "C" file, or in the court's file, to reflect that defendant made a section 1381 demand.

The trial court then found defendant in violation of his probation on the instant matter and in case No. 03F07099 on November 17, 2006. On December 20, 2006, the trial court terminated defendant's probation in case No. 03F07099, imposing a $200 restitution fine. It also terminated probation on the instant matter and sentenced defendant to the middle term of three years, with all but one-third of the sentence stayed, and purported to run it consecutively to the term defendant was serving on the Alameda County case.

On May 2, 2007, the Department of Corrections and Rehabilitation informed the trial court that defendant had been paroled on May 18, 2006, prior to sentencing in the instant matter, and "[t]herefore, this case should be sentenced without

regards to the prior commitments." The trial court vacated the previous sentence and, on June 8, 2007, the trial court resentenced defendant to the middle term of three years in state prison.

DISCUSSION

I

Dismissal for Lack of Speedy Sentencing

Defendant contends the trial court should have dismissed the action for lack of jurisdiction because defendant constructively filed a request for speedy sentencing in absentia under section 1203.2a. We disagree.

"Penal Code section 1203.2a permits a defendant who has been released on probation and subsequently committed to a state prison for another offense, to request the trial court that granted probation to revoke probation and impose sentence." (*In re White* (1969) 1 Cal.3d 207, 210.) Section 1203.2a states in pertinent part:

"If any defendant who has been released on probation is committed to a prison in this state or another state for another offense, the court which released him or her on probation shall have jurisdiction to impose sentence, if no sentence has previously been imposed for the offense for which he or she was granted probation, in the absence of the defendant, on the request of the defendant made through his or her counsel, or by himself or herself in writing, if such writing is signed in the presence of the warden of the prison in which he or she is

confined or the duly authorized representative of the warden, and the warden or his or her representative attests both that the defendant has made and signed such request and that he or she states that he or she wishes the court to impose sentence in the case in which he or she was released on probation, in his or her absence and without him or her being represented by counsel. [¶] . . . [¶] . . . If sentence has not been previously imposed and if the defendant has requested the court through counsel or in writing in the manner herein provided to impose sentence in the case in which he or she was released on probation in his or her absence and without the presence of counsel to represent him or her, the court shall impose sentence . . . . If the case is one in which sentence has not previously been imposed, the court is deprived of jurisdiction over defendant if it does not impose sentence . . . within 30 days after defendant has, in the manner prescribed by this section, requested imposition of sentence."

"'The purpose of section 1203.2a is to prevent inadvertent consecutive sentences which would deprive defendant of the benefit of section 669, providing that sentence shall be concurrent unless the court expressly orders otherwise. [Citations.]' (*People v. Ruster* [(1974)] 40 Cal.App.3d [865,] 870.) . . . [¶] 'Requests for sentencing pursuant to section 1203.2a must be in strict compliance with that section. [Citations.] . . . [I]f the court pronounces judgment in the absence of such a request and waiver, it violates the defendant's constitutional rights to have the assistance of and to be personally present with counsel. (*People v. Ruster,*

supra, 40 Cal.App.3d at p. 871.)' (*People v. Willett* (1993) 15 Cal.App.4th 1, 7.)" (*People v. Wagner* (2009) 45 Cal.4th 1039, 1053-5054.)

Defendant acknowledges that he did not strictly comply with the request procedures, as required to obtain speedy sentencing pursuant to section 1203.2a. He argues, however, that he should be deemed to have "constructive[ly]" complied with the procedures because he attempted to file the required demand but was "misled, mis-advised and prevented" by prison officials from doing so. We reject his contention.

Defendant relies on the constructive filing doctrine of *People v. Slobodion* (1947) 30 Cal.2d 362. In *Slobodion*, the Supreme Court granted relief from the late filing of a notice of appeal under the principle of constructive filing. There, the defendant had deposited in a timely fashion his notice of appeal in the mailbox at the prison where he was incarcerated. Prison officials, however, delayed placing it in the United States mail for 10 days. As a result, the notice was filed five days after expiration of the time to appeal. The Supreme Court held the delivery of the notice of appeal to prison employees for forwarding six days prior to expiration of the time for taking the appeal constituted a constructive filing. (*Id.* at pp. 367-368.)

Here, unlike *Slobodion*, defendant admittedly did not prepare the required form or attempt to deliver it to the required department. He did not do so, even though the form with which he was served expressly stated the procedure he had

to follow. Thus, he did not do what was necessary to be deemed to have attempted to comply with the statutory requirements.

Defendant claims he was "prevented" from complying with the filing procedures. The most defendant even attempted to prove, however, was that he was misinformed—not "prevented" or "thwarted," as in *Slobodion*. Moreover, defendant's proof consisted solely of his self-serving testimony that he was misdirected by prison personnel as to how to proceed. He did not submit copies of the alleged letters he wrote, nor did he present the testimony of the counselor, Kay Stein, who allegedly gave him the misinformation.

In sum, defendant failed to take the steps necessary to invoke his rights under section 1203.2a. Consequently, the motion was properly denied.

II

Section 1381

Defendant also contends that he should be deemed to have constructively complied with the speedy sentencing request procedures set forth in section 1381. Again, we disagree.

Section 1381 provides in pertinent part: "Whenever a defendant has been convicted, in any court of this state, of the commission of a felony . . . and has entered upon a term of imprisonment . . . and at the time of the entry upon the term of imprisonment . . . there is pending, in any court of this state, any other indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced, the district attorney of the county in which the matters are pending

shall bring the defendant to trial or for sentencing within 90 days after *the person shall have delivered to said district attorney written notice of the place of his or her imprisonment . . . and his or her desire to be brought to trial or for sentencing* unless a continuance beyond the 90 days is requested or consented to by the person, in open court . . . . In the event that the defendant is not brought to trial or for sentencing within the 90 days the court in which the charge or sentencing is pending shall, on motion or suggestion of the district attorney, or of the defendant . . . or his or her counsel . . . or on its own motion, dismiss the action." (Italics added.)

To comply with the section 1381 requirements, defendant had to deliver to the Sacramento County District Attorney "written notice of the place of his . . . imprisonment . . . and his . . . desire to be brought . . . for sentencing [regarding the criminal proceeding in which he remained to be sentenced] . . . ." As with section 1203.2a, case authority emphasizes that an inmate must *strictly comply* with the statutory requirements of section 1381 to warrant the drastic sanction of dismissal. (See *People v. Gutierrez* (1994) 30 Cal.App.4th 105, 111; *Reynolds v. Superior Court* (1980) 113 Cal.App.3d 510, 514.)

Despite the strict compliance requirement, defendant argues that he should be deemed to have *constructively* complied with the procedures because he made a "good faith effort" to file the

section 1381 demand. For the same reasons we reject his claim under section 1203.2a, we reject this contention as well.

People v. Gutierrez, *supra*, 30 Cal.App.4th 105, requires full, literal compliance with section 1381 before dismissal is required. "Because of the drastic sanction imposed by section 1381 [to wit, dismissal], a prisoner must strictly comply with its conditions. (*People v. Clark* (1985) 172 Cal.App.3d 975, 980-981; *People v. Garcia* (1985) 171 Cal.App.3d 1187, 1191.)" (*People v. Gutierrez*, *supra*, 30 Cal.App.4th at p. 111.) There must be proof of delivery of the demand on the district attorney, and substantial compliance with section 1381 will not suffice. (*Ibid*.)

As explained in part I, *ante*, the record supports the court's finding that defendant failed to comply with the requirements of section 1381 and the court's implied finding there were no grounds to excuse his lack of compliance. The motion was properly denied.

Additionally, defendant perfunctorily asserts that the failure to dismiss the action was a violation of the equal protection clause of the Fourteenth Amendment. While defendant did raise the issue of dismissal under section 1203.2a in the trial court, he made no specific argument based on the federal or state Constitution. If defendant wanted to make constitutional arguments, he should have addressed such arguments to the trial court. It is improper for a defendant to raise constitutional speedy trial claims for the first time on appeal. (See *People v. Blanchard* (1996) 42 Cal.App.4th 1842,

1848-1849.) Moreover, defendant has failed adequately to brief this contention, providing no factual or legal analysis other than a single case citation and a one-sentence claim to this effect. Therefore, we decline to address this contention. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

III

Custody Credits

Defendant contends the trial court improperly calculated his custody credits by failing to award him credits on this case for the time he served from March 1, 2004 to May 13, 2004. Defendant has failed to establish error.

When defendant was resentenced on this case on June 8, 2007, the issue of credits was revisited. At the hearing, defense counsel informed the court that his review of the files indicated that "all the time was given to the other cases, for example, the 2003 case, the 666 . . . one of the probations was terminated and time was put on the 03 case." Counsel stated, "[T]here's no time given ever to the 2004 case, and he feels that he has some credits due there. I don't see those after we did a thorough review." After review of the court records from June 15, 2004, counsel concluded that "all the time was put on another case." The trial court agreed with counsel, explaining to defendant that the "Judge placed you on probation, imposed jail time on one or more of the other cases, but on the '04 case, no time was imposed in this case." A review of the other files had confirmed that the credits were placed there.

We agree with defendant's trial counsel and the trial court that the record does not support defendant's claim that he is entitled to additional credits on this case for the time he served from March 1, 2004 to May 13, 2004.

When defendant was sentenced on June 15, 2004, the trial court expressly placed all of defendant's custody time on the misdemeanor violations of probation that were being terminated. Specifically, the trial court stated: "On the case ending in 406, imposition of judgment and sentence is suspended for 5 years. [¶] I place you on a formal grant of probation under the terms and conditions found in the probation report beginning on page 19, items 1 through 5. [¶] *I order that any time be placed on the VOP's*, and I would terminate all misdemeanor VOP's upon completion of county jail time." (Italics added.) Thus, there was no time left to award later on the instant matter.

Defendant's confusion seems to arise from the March 1, 2004, entry in the clerk's minutes indicating defendant was returned on the bench warrant in case No. 03F07099 and probation was reinstated on the original terms and conditions. Defendant seems to assert that this entry reflects he was released from custody on case No. 03F07099 on that date, making his subsequent time necessarily attributable solely to the instant matter. He is not correct.

Defendant had been ordered to serve 120 days when he was placed on probation. He was ordered to serve an additional 90 days on December 4, 2003, when he was found in violation of his probation. On that date, however, the trial court sent

defendant to work project instead of jail. The record reflects defendant did not appear for work project, which resulted in defendant's arrest on February 26, 2004, on the bench warrant. Thus, when he appeared on the warrant and probation was reinstated on the original terms and conditions, he owed at least 90 days and was sent to jail on case No. 03F07099. Accordingly, he was not in custody during that time solely on the instant matter. In fact, the trial court noted at the June 15, 2004, sentencing hearing that defendant was then currently serving time on case No. 03F07099 and was not due to be released until June 27, 2004.

In any event, as set forth above, when the trial court sentenced defendant on June 15, 2004, it expressly placed all of defendant's custody time on other cases. Thus, he was not entitled to additional custody credits on the instant case for the time between March 1, 2004 and May 13, 2004.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

SCOTLAND, P. J.

BUTZ, J.